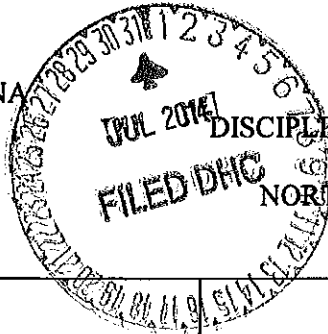


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
14 DHC 25

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

ANSWER

PETER A. PAUL, Attorney,

Defendant

Defendant, Peter A. Paul, answers the Complaint of the Plaintiff as follows:

1. The allegations contained in paragraph 1 of the Plaintiff's Complaint are admitted.
2. The allegations contained in paragraph 2 of the Plaintiff's Complaint are admitted.
3. The allegations contained in paragraph 3 of the Plaintiff's Complaint are admitted.
4. The allegations contained in paragraph 4 of the Plaintiff's Complaint are admitted.
5. The allegations contained in paragraph 5 of the Plaintiff's Complaint are admitted. By way of further explanation, Mr. Paul instructed his bookkeeper to send the annual reports but the reports were not sent. Mr. Paul did not adequately follow up to ensure the annual reports were sent.
6. The allegations contained in paragraph 6 of the Plaintiff's Complaint are admitted.
7. It is admitted that client funds from the closing in file 06-247-12 were used to pay the costs due to the register of deeds at the time of the closing. At the time that the \$15 was

refunded by the clerk, those funds belonged to the client and were properly deposited into the trust account. Any remaining allegations or inferences contained in paragraph 7 of the Plaintiff's Complaint are denied. By way of further answer, Mr. Paul later advanced from his operating account recording fees of \$71 for a lease agreement on the same property for the same client in December 2009. The client never paid or reimbursed Mr. Paul for these advanced recording fees.

8. The allegations contained in paragraph 8 of the Plaintiff's Complaint are admitted. By way of further explanation, the check was never sent to the client in file 06-247-12. Neither Mr. Paul nor his bookkeeper recalls the reason why the check was not sent. The client never received nor negotiated the check. The check was eventually voided when it had not been negotiated. At the time that the check was issued to the client on May 28, 2008, Mr. Paul had not incurred the advanced recording fees for this client on the same property.
9. The allegations contained in paragraph 9 of the Plaintiff's Complaint are admitted. The client in file 06-247-12 retained Mr. Paul for services prior to and after the closing of property related to file 06-247-12 and accrued legal fees and costs. Partial payments on some invoices billed to the client in this matter were made; however, invoices totaling more than \$20,221.00 were uncollected and likely uncollectible. The uncollected invoices included recording costs of \$71 that Paul advanced for the client in December 2009 that were never reimbursed. After a review of the file in January 2012, a check was issued in the amount of \$15.00 to Mr. Paul. Mr. Paul intended this payment as partial credit to the invoices, including the advanced and unreimbursed recording costs, and as final disbursement of trust funds from the file.

10. The allegations contained in paragraph 10 of the Plaintiff's Complaint are admitted in that Mr. Paul's client ledger for file 06-247-12 reflects that the disbursement of \$15.00 to him in January 2012 was for "recording fees paid in advance." Mr. Paul did not make that notation himself. At the time this check was written to Mr. Paul in January 2012, his office had advanced \$71 in recording fees for this client in December 2009, which recording fees had not been reimbursed by the client.
11. The allegations contained in paragraph 11 of the Plaintiff's Complaint are denied. By way of further explanation, see responses to paragraphs 7, 9 and 10.
12. It is admitted that, at the time of the disbursement, Mr. Paul did not contact the client and seek or obtain an agreement that he could disburse the \$15 remaining in trust as reimbursement of the unpaid advanced costs and other outstanding amounts. The remaining allegations and any inferences contained in paragraph 12 of the Plaintiff's Complaint are denied. By way of further explanation, see responses to paragraphs 7, 9 and 10.
13. The allegations contained in paragraph 13 of the Plaintiff's Complaint are admitted in part. The closing in file 05-006-16 occurred on May 23, 2008 and Mr. Paul disbursed funds from it. There was an unsatisfied Deed of Trust with Wachovia Bank on the property. Because Mr. Paul was unable to obtain a specific payoff amount from Wachovia Bank before the closing date, the payoff balance was intentionally over-estimated. Mr. Paul retained from the closing proceeds and placed in trust the amount of \$310,000.00, which was the amount on the original deed of trust, to ensure there were enough funds in trust to payoff Wachovia Bank. When Mr. Paul received the payoff from Wachovia Bank, the actual loan balance was \$307,393.97. Thus, there was

an overage of \$2,606.03 left in the trust account - the balance between the amount owed to Wachovia Bank and the amount withheld from the closing. Any remaining allegations or inferences in paragraph 13 not admitted above are denied. By way of further explanation, J.H. and Mr. Paul agreed that Mr. Paul would retain the additional funds, as there was or likely would be a large amount of outstanding legal fees and costs in a number of pending matters Mr. Paul was handling for the clients.

14. The allegations contained in paragraph 14 of the Plaintiff's Complaint are admitted. By way of further explanation, prior to the closing for file 05-006-16, the client retained the services of Peter A. Paul, P.C. for other matters that involved extensive legal counsel, title work, document preparation and expenses. The matters were pending over an extended time period. The clients owed Mr. Paul over \$68,000 for legal services performed, including costs advanced by Mr. Paul for the clients. Even though the clients acknowledged the debt owed, agreed there would be future legal work and costs, and agreed that Mr. Paul would retain the \$2,606.03 for legal fees and costs, Mr. Paul wanted to contact the clients to let them know he planned to disburse the remaining funds in trust for partial payment of the outstanding legal fees and advanced costs. However, he was unable to locate either client as the wife was evicted from her home and her husband left town. Neither client left a forwarding address. Mr. Paul's attempts to contact the clients were unsuccessful. In January 2012, his bookkeeper conducted an internal and informal audit of the trust funds. Upon discovering the remaining \$2,606.03 in the trust account, the funds were disbursed to Mr. Paul to reimburse a small portion of the legal fees and advanced costs owed that the clients had previously acknowledged that they owed his firm.

15. The allegations contained in paragraph 15 of the Plaintiff's Complaint are denied. By way of further explanation, these funds remained in the trust account under an oral agreement between J.H. and Mr. Paul. Also, see responses to paragraphs 13 and 14.
16. The allegations contained in paragraph 16 of the Plaintiff's Complaint are admitted.
17. The allegations contained in paragraph 17 of the Plaintiff's Complaint are admitted.
18. The allegations contained in paragraph 18 of the Plaintiff's Complaint are admitted.
19. The allegations contained in paragraph 19 of the Plaintiff's Complaint are admitted. By way of further explanation, upon receiving the Notice of Grievance initiated by V.H.'s now former husband, Mr. Paul searched for, and was eventually successful after contacting numerous sources in locating V.H. Mr. Paul offered to return the \$2,606.03 to her. He made the offer even though he had generally agreed to retain these funds for fees and costs owed.
20. It is admitted that Mr. Paul produced trust account records to the State Bar pursuant to its request on or about January 15, 2013.
21. It is admitted that Mr. Paul produced a client ledger for file 05-006-16 to the State Bar pursuant to its request on or about January 15, 2013.
22. The allegations contained in paragraph 22 of the Plaintiff's Complaint are admitted. By way of further explanation, after receiving the Notice of Grievance and the request for trust account records on this matter from the State Bar, Mr. Paul became concerned about whether he should have disbursed the funds remaining in trust for payment of the outstanding fees and costs without a specific consent to do so. He panicked and instructed his bookkeeper to delete the check which was made payable to him from the trust account ledger for V.H. However, shortly after doing so and before the State Bar

made any inquiries about the incorrect ledger, Mr. Paul instructed his bookkeeper to correct the client ledger. In his subsequent Response to the State Bar, Mr. Paul provided the accurate client ledger for file-05-006-16 and admitted his prior actions regarding the client ledger.

23. The allegations contained in paragraph 23 of the Plaintiff's Complaint are admitted.

See response to paragraph 22 above.

24. The allegations contained in paragraph 24 of the Plaintiff's Complaint are admitted. See response to paragraph 22 above.

25. It is admitted that Mr. Paul initially provided the falsified client ledger for file 05-006-16 to the State Bar. See response to paragraph 22 above.

The remaining statements or allegations in the unnumbered paragraphs of the complaint are legal conclusions and do not require any response or answer. Nonetheless, it is specifically denied that Mr. Paul engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) or committed any criminal act, including embezzlement, that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) by disbursing the funds noted in file numbers 05-006-16 and 06-247-12.

This the 31 day of July, 2014.

THE BROCKER LAW FIRM, P.A.

By: 

Douglas J. Brocker

N.C. State Bar No. 22802

K. Brooke Ottesen

N.C. State Bar No. 44423

5540 Centerview Drive, Suite 200

Raleigh, North Carolina 27606

Telephone: (919) 424-6334

*Counsel for Defendant*

### CERTIFICATE OF SERVICE

This is to certify that the undersigned this date served this document in the above-entitled action upon all parties to this cause by depositing a copy hereof, postage prepaid, in the U.S. Mail, properly addressed to:

Ms. Jennifer Porter  
Deputy Counsel  
The North Carolina State Bar  
Post Office Box 25908  
Raleigh, NC 27611

This the 31 day of July, 2014.

THE BROCKER LAW FIRM, P.A.

By: 

Douglas J. Brocker

5540 Centerview Drive, Suite 200

Raleigh, North Carolina 27606

Telephone: (919) 424-6334

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